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ATTORNEY FOR APPELLANT:

THOMAS W. VANES
Office of the Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL RYAN MCGILL,
Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0602-CR-80

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause Nos. 45G03-0207-FC-104, 45G03-0406-FA-32

January 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michael Ryan McGill appeals his sentence for rape¹ and criminal deviate conduct.² He argues the trial court failed to consider mitigating factors supported by the record. Because the trial court was not required to accept his alleged mitigating factors or explain why certain facts were not mitigating, and because the mitigating factors McGill offered are not significant, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 24, 2004, McGill entered a floral shop. He grabbed K.S. from behind and held a knife to her face. McGill then forced K.S. to the downstairs area of the floral shop, where he tied her hands behind her back. McGill fondled K.S., then forcibly had sexual intercourse with her. McGill took money from the floral shop and pulled on the wires of the surveillance monitor, knocking it down.

Three days later, McGill entered a tanning salon while J.D. was working. McGill held a knife to J.D.'s throat and forced her into a bathroom. While in the bathroom, McGill taped J.D.'s hands to the sink, took her money and cell phone from her purse, and forcibly committed sexual acts on her.

McGill was charged with rape, criminal deviate conduct, two counts of robbery, two counts of confinement, and two counts of sexual battery. He agreed to plead guilty to rape and criminal deviate conduct. The plea agreement included a sentencing cap of ten years for the criminal deviate conduct charge. As for the rape charge, the parties agreed to argue to the court their positions on the sentence to be imposed.

¹ Ind. Code § 35-42-4-1.

² Ind. Code § 35-42-4-2.

After the sentencing hearing, the trial court accepted the plea agreement. It found no mitigating circumstances and two aggravating circumstances. Then the court sentenced McGill to seventeen years for rape and ten years for criminal deviate conduct, and ordered the sentences to be served consecutively.

DISCUSSION AND DECISION

During the sentencing hearing McGill produced evidence of his troubled childhood and drug addiction. McGill claims these are mitigating factors because they were the “root” of the anger that caused him to commit his violent crimes against the two women. (Br. of Appellant at 7.) The trial court only briefly referred to his drug addiction, did not discuss the rest of his evidence, and did not find any mitigating factors. McGill argues the trial court improperly overlooked the mitigating factors.

Sentencing and the determination of mitigating circumstances lie within the trial court’s sound discretion. *Legue v. State*, 688 N.E.2d 408, 411 (Ind. 1997). A sentence will not be revised unless no reasonable person could find the sentence appropriate. *Grund v. State*, 671 N.E.2d 411, 418 (Ind. 1996). It is not mandatory that the trial court find a mitigating factor and the sentence will be revised only for an abuse of discretion. *O’Neil v. State*, 719 N.E.2d 1243, 1244 (Ind. 1999). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Robbins v. State*, 839 N.E.2d 1196, 1199 (Ind. Ct. App. 2005).

The trial court was not required to accept McGill’s evidence as to mitigating factors. *See Grund*, 671 N.E.2d at 418. The trial court referred to McGill’s drug addiction in its assessment of his character; thus that evidence was not overlooked. The

trial court did not have to explain why it did not find his addiction a mitigating circumstance. *See Crawley v. State*, 677 N.E.2d 520, 523 (Ind. 1997).

Although the court is not required to find mitigating circumstances, it may not ignore mitigating circumstances that are significant and clearly supported by the record. *Echols v. State*, 722 N.E.2d 805, 808 (Ind. 2000). The trial court has discretion to find a troubled childhood a factor, especially because it is not listed as a mitigating factor in Ind. Code § 35-38-1-7.1(c). *See Jones v. State*, 698 N.E.2d 289, 291 (Ind. 1998). Furthermore, given the circumstances of this case, McGill's troubled childhood is not significant because "McGill did not claim a direct causal relationship between his background/drug dependency and the sexual assaults for which he stood convicted." (Br. of Appellant at 6.)

CONCLUSION

The trial court was not required to accept McGill's alleged mitigating factors. Nor was it obliged to explain why certain facts were not mitigating factors. The mitigating evidence McGill produced was not significant. The trial court did not abuse its discretion. Accordingly, we affirm.

Affirmed.

RILEY, J., and BAILEY, J., concur.